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No. 60

IN THE

Supreme Court of the United States

JULIUS A. KRUG, *Petitioner*,

v.

SHERIDAN-WYOMING COAL COMPANY, INC., *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

RESPONDENT'S MOTION THAT CERTIORARI BE GRANTED TO CORRECT DIMINUTION OF THE RECORD.

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Comes now the respondent herein, Sheridan-Wyoming Coal Co., Inc., and respectfully moves that certiorari be granted to correct diminution of the printed record filed by the petitioner, herein, consisting of the absence therefrom of the following items:

(a) The omission of graph Exhibit K to the amended complaint (R. 84), and

(b) A certain brief *amicus curiae* filed below together with a motion for leave to file it by the Big Horn Coal Company (R. 95).

A. The graph Exhibit K was designated by the petitioner as disclosed by the index to the printed record. Its omission (R. 84) presumably was due to a printer's inadvertence. It is most essential to the respondent for the purpose of demonstrating the inevitable economic chaos which will be visited upon a vast segment of the Far Western coal industry if the petitioner succeeds in upholding his claimed right to violate a statutory regulation now incorporated into the coal leasing laws of the United States and respondent's lease thereunder.

B. The brief *amicus curiae* was not designated by the petitioner over the objection of respondent, although the motion for leave to file it in the Court of Appeals below was included (R. 95).

The Clerk's office of this court did not consider that said brief was a part of the record below but drew attention to the fact that respondent could certify up a copy and thereupon base any references to be made thereto.

Respondent is uncertain as to whether or not this latter course would be the equivalent of including said brief in the record of this case in this court, and is also uncertain as to whether or not it would be necessary that certification be the equivalent of including it in the record.

In view of these factors and in view of its belief that said brief is actually a part of the record below, the respondent adopts this as the only means of receiving clarification of these questions before filing its brief.

C. The reasons as to why respondent believes the Big Horn brief to be a part of the record and its importance in the cause are as follows:

The Big Horn Coal Company was the applicant before the Interior Department for a coal mining lease to valuable public coal lands controlled by the laws of the United States under which the petitioner has lawful leasing powers only so long as he acts within his statutory authority as Secretary of the Interior. Inasmuch as the respondent has a coal mining lease under the statutes of the United States on other adjacent public lands and would sustain grave

and irreparable injury thereto if the defendant were allowed to ignore or violate the laws controlling him; and inasmuch as such laws were written into respondent's coal mining lease, it was necessary for the respondent to bring this action to enjoin the defendant personally from acting in violation of the laws of the United States which the granting of a lease to the Big Horn Coal Company would result in.

In its complaint respondent has pleaded violations of the law already committed by the defendant and the intentional participation of the Big Horn Coal Company. In the brief *amicus curiae* the Big Horn Coal Company confirmed its intentional wrong-doing and made certain very damaging admissions with respect to the lawless nature and character of their whole lease application and the proceeding thereon when it was before the Interior Department.

Respondent believes that this Court is entitled to the benefit of considering the admissions which Big Horn made in its brief *amicus curiae* below in order that this Court may know that the whole nature and character of a departmental proceeding was one of controlling persuasion by the Big Horn Coal Company, whereby it induced the defendant to violate and ignore the law which controlled his leasing authority.

All motions are a part of the record; and the motion covering the brief *amicus curiae* was so treated (R. 95). It is respondent's view that any attachment to such motion thereby becomes incorporated in the motion and is an integral part of it.

Indeed the Court of Appeals in passing upon the motion for leave would have to have before it the very brief which was submitted in order to dispose of the motion inasmuch as the motion for leave plainly referred to that brief specifically and was plainly connected thereto.

It is also clear that the Court of Appeals took Big Horn's brief *amicus curiae* as confirming admissions from Big

Horn, of the allegations of Sheridan-Wyoming's complaint. That Court in its opinion which is now here for review, said:

> "The 'good faith' of Big Horn, upon which the Secretary rests his present position, has no relevance to the issue here presented. Of course Big Horn acted in good faith. It applied for a federal lease the day it was organized, and according to the complaint, was perfectly frank in stating that the federal land was necessary to its proposed venture. *It never at any time, so far as this record shows, attempted to gloss over the fact that it desired the regulation either changed or ignored.*" (Italics supplied)

The italicized matter represents a specific reference to and reliance upon admissions in the Big Horn brief.

It would indeed be singular if this Court could not have before it the same record which the Court of Appeals had in arriving at its opinion which is here for review.

This attitude which Big Horn demonstrated in their brief *amicus curiae* and in the departmental proceedings below is the very factor which raised such a storm of protest to the Department of Interior by the entire western coal industry. At that time the United Mine Workers of America, Montana Coal Operators Association, Coal Producers Association of Washington, Southern Wyoming Coal Operators Association, Utah Coal Operators Association, Rocky Mountain Coal Mining Institute, and New Mexico Coal Operators Association, violently protested the actions of the Big Horn Coal Company. These associations represent many thousands of employees and many hundreds of investors dependent upon the enforcement of the coal leasing laws of the United States for their very livelihood. It is submitted that in a question of this importance to so many thousands of people, this Court should be as fully advised as possible as to the fundamental basis and controlling reason that the defendant was persuaded to ignore and violate the laws of the United States.

WHEREFORE RESPONDENT PRAYS that this motion for certiorari to correct the diminution of the record be allowed, in order that this Court may have a full record before it, and that respondent in preparing its brief may do so upon the basis of a full and complete record.

Respectfully submitted,

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